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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: UBER TECHNOLOGIES,
INC., PASSENGER SEXUAL
ASSAULT LITIGATION

This Document Relates to:

ALL ACTIONS

Case No. 3:23-md-03084-CRB

**DEFENDANTS UBER TECHNOLOGIES,
INC., RASIER, LLC, AND RASIER-CA, LLC'S
RENEWED ADMINISTRATIVE MOTION TO
SEAL THE SETTLEMENT AND RELEASE
AGREEMENT AND QUOTED AGREEMENT
LANGUAGE PRODUCED TO THE COURT
PURSUANT TO THE FEBRUARY 29, 2024
ORDER**

Judge: Hon. Lisa J. Cisneros
Courtroom: G – 15th Floor

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Under Local Rules 7-11 and 79-5, and pursuant to the Court’s Order (ECF No. 305) Defendants Uber Technologies, Inc., Rasier, LLC, and Rasier-CA, LLC (“Uber”) hereby renew their motion for an order by the Court to seal only the following material: (1) June 18, 2021 Settlement and Release Agreement (“Settlement Agreement”); (2) language quoted from the Settlement Agreement within Defendants’ Submission of Settlement Agreement and Protective Orders (“Submission”); and (3) Plaintiffs’ Response to Defendants’ Argument in Connection with filing of Settlement Agreements and Protective Orders (“Plaintiffs’ Response”) (ECF No. 298-3), and respectfully files herewith in support an explanatory Notice of Lodging of these materials with the Court. The Settlement Agreement and quoted language is provided to the Court on March 1, 2024 pursuant to the Court’s February 29, 2024 Order (ECF No. 283). The Settlement Agreement; the Submission containing quoted language; and Plaintiffs’ Response quoting language from confidential settlement agreements (filed at ECF No. 298-3) are attached as Exhibits 1-3, filed concurrently with this Administrative Motion.

When courts consider motions to seal records attached to non-dispositive motions like the current discovery dispute, they apply the “good cause” standard of Rule 26(c) of the Federal Rules of Civil Procedure because such records “are often ‘unrelated, or only tangentially related, to the underlying cause of action.’” *Kamakana v. City of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (citation omitted); *accord Adtrader, Inc. v. Google LLC*, No. 17-cv-07082-BLF, 2020 WL 6387381, at *1 (N.D. Cal. Feb. 24, 2020). In contrast, filings that are more directly related to a case’s merits “may be sealed only upon a showing of ‘compelling reasons’ for sealing.” *Adtrader, Inc.*, 2020 WL 6387381, at *1 (quoting *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101–02 (9th Cir. 2016)). “‘Good cause’ is a non-rigorous standard that has been construed broadly across procedural and statutory contexts.” *Ahancian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010). The “good cause” sealing standard is the same standard that applies to the entry of a protective order in civil discovery. *See Fed. R. Civ. P. 26(c)(1)* (“The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . .”). It

1 “gives the district court much flexibility in balancing and protecting the interests of private parties.”
 2 *Kamakana*, 447 F.3d at 1180.

3 Uber seeks to seal the exemplar Settlement and Release Agreement along with language
 4 quoting settlement agreements contained in the motion titled “Defendants Submission of Settlement
 5 Agreements and Proposed Orders” along with the language quoted in Plaintiffs’ Response Motion
 6 (ECF No. 298-3). The “good cause” standard applies here as these Settlement Agreements, and
 7 language quoted therefrom, are only tangentially related to the merits of this case and are ordered for
 8 submission merely as exemplars. These agreements involve unrelated parties and evidence a clear
 9 intent by the settling parties for such agreements to remain confidential. Shortnacy Decl. ¶ 4.
 10 Additionally, California law places a large importance on the privacy and confidentiality of
 11 settlements. *See, e.g.*, Cal. Evid. Code § 1119 (“All communications, negotiations, or settlement
 12 discussions by and between participants in the course of a mediation or a mediation consultation
 13 should remain confidential.”).

14 Uber files this Motion and all supporting papers in accordance with the Court’s instruction at
 15 the February 22, 2024 hearing to permit redactions and allow filing materials with the Court under
 16 seal. In accordance with this Court’s express instruction, the Settlement Agreements and any language
 17 quoted directly from such agreements should be filed under seal to protect the confidentiality of the
 18 parties. *See* Minute Entry, 3:23-md-3084-CRB, ECF No. 283 (Feb. 22, 2024) (“The parties may file
 19 this material with motions to seal.”).

20 In compliance with this Court’s February 29, 2024 Order [ECF No. 293], Uber does not seek
 21 to file under seal the four letters authored by non-party advocacy groups or the Protective Orders
 22 entered by other Courts in unrelated cases, which Uber is re-filing on the public docket in redacted
 23 format. *See* Tr. at 45:11–15 (“MAGISTRATE JUDGE CISNEROS: So just for clarity, if you all could
 24 file ... File under seal, you know, one to five exemplars of these confidentiality provisions. And I
 25 would prefer to get the entire settlement agreement with the identifying information redacted.”).

26 Assessment of the public and private interests implicated here further warrant sealing the
 27 Settlement Agreement and language quoted from the Settlement Agreement. Local Rule 79-5(c)(1)(i).

Exhibit 2 includes a Settlement and Release Agreement between non-parties that contain confidentiality provisions and are not otherwise available to the public. Language from this confidential Settlement Agreement is quoted in the Motion captioned: “Defendants’ Submission of Settlement Agreements and Protective Orders.” Additionally, Plaintiffs’ quote from confidential settlement agreements in their Administrative Motion (ECF No. 298-3). The Settlement Agreement contains the personal information and identifying information of the non-parties. Declaration of Michael B. Shortnacy (“Shortnacy Decl.”) ¶ 3. It also contains clear language evidencing an intent to maintain the agreements as confidential between the parties. *Id.* ¶ 4. The public disclosure of this Settlement Agreement from an unrelated case, containing the personal and identifying information about the parties in that case, could cause significant and avoidable harm. Evidence of these harms is also set forth in detail in the advocacy letters which have been re-filed on the public record. *See* Local Rule 79-5(c)(1)(ii).

That conclusion is consistent with, and thus further supported by, the protective order the Parties spent weeks negotiating, and which the Court entered on December 28, 2023 (ECF No. 176). The Protective Order permits a Designating Party to designate information as “Confidential” that the party believes contains, among other things, “the personal information and any identifying information of any Non-Party” and “any information regarding any Party or Non-Party not otherwise available to the public that is protected from disclosure by law, regulation, or agreement.” Protective Order, 3:23-md-3084-CRB, ECF No. 176 ¶ 2.3 (Dec. 28, 2023). As described, the Exhibit 2 Settlement Agreement inarguably falls within this category. Shortnacy Decl. ¶¶ 3, 5.

Conversely, there is no strong public interest in accessing the information contained in the Settlement Agreement, much less one that outweighs the significant interests in sealing the record discussed above. Records that are only “tangentially related to the merits of a case” are not subject to a strong presumption of access. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). The Exhibit 2 Settlement Agreement does not pertain to the merits of this litigation. The Settlement Agreement was produced at the direction of this Court related to a request to modify Pretrial Order No. 5 regarding the scope of potential production of documents from unrelated cases. Minute

Entry, 3:23-md-3084-CRB (LJC), ECF No. 283 (Feb. 22, 2024). The public interest in learning about confidential dispute resolution agreements between non-parties in unrelated cases, filed now to aid the Court in resolving a discovery dispute, is thus limited. Such limited interest does not outweigh the significant countervailing interests in protecting non-party's confidential contracts that contain personal information and identifying information.

Finally, no less restrictive alternative to sealing the Exhibit 2 Settlement Agreement and quoted language is sufficient. Local Rule 79-5(c)(1)(iii). Exhibits 1-3 materials to be sealed contain sensitive information which Uber's Motion is intended to protect from public dissemination. Shortnacy Decl. ¶ 5. As such, actions short of sealing these materials would be insufficient to protect the personal identifying information of the parties to the Settlement Agreement.

CONCLUSION

For the foregoing reasons, Uber respectfully requests this Court grant the renewed administrative motion to seal the Settlement Agreement and language quoted from settlement agreements contained in Exhibits 1-3, pursuant to the instruction of the Court during the February 22, 2024 hearing, and the Court's February 29, 2024 Order.

DATED: March 1, 2024

SHOOK HARDY & BACON LLP

By: /s/ Michael B. Shortnacy

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